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IN THE

# SUPREME COURT OF THE UNITED STATES

October Term, 1932. No. 90.

ANNA S. BAINBRIDGE, Petitioner

*v.*

MERCHANTS & MINERS TRANSPORTATION COMPANY.

## Brief for Petitioner..

EDWIN J. McDERMOTT,
THOMAS D. McBRIDE,
WILLIAM CHARLES BROWN,
*Counsel for Petitioner.*

Martin & Lyle, 302 Penfield Bldg., Phila., Pen. 0665, Keystn. Race 6067.

# INDEX.


SUBJECT INDEX. Page

I. Statement of matter involved ..... 1

II. Question presented ..... 2

III. Argument ..... 3
Summary of argument ..... 3

Point A. Jurisdiction of State Courts ..... 4

Point B. Definition of venue ..... 7

Point C. Congress cannot regulate venue in state courts ..... 8

Point D. Congress has not attempted to regulate venue in state courts ..... 16

Point E. Pennsylvania venue provision applies and under it action is properly brought ..... 17

IV. Conclusion ..... 20

TABLE OF CASES CITED.


| | Page |
|---|---|
| Bennet v. Connelly, 122 N. Y. Misc. 149 | 20 |
| Calder v. Bull, 3 Dallas 386 | 9 |
| Caldwell v. N. J. Steamboat Co., 47 N. Y. 282 | 10 |
| Carpenter v. Snelling, 97 Mass. 452 | 10 |
| Chambers v. B. & O. R. R., 207 U. S. 142 | 10 |
| Chi. M. & St. P. R. Co. v. McGinley, 175 Wisc. 565 | 13 |
| Claflin v. Houseman, 93 U. S. 130 | 5, 6 |
| Collector v. Day, 11 Wallace 113 | 4, 9 |
| Crowell v. Benson, 52 S. Ct. 285 | 16 |
| Doll v. Chi. Gr. W. R. Co., 159 Minn. 323 | 13 |
| Douglass v. N. Y. N. H. & H. R. Co., 279 U. S. 377 | 15 |
| Engel v. Davenport, 271 U. S. 33 | 6 |
| Grubb v. Public Utilities Comm., 281 U. S. 470 | 5 |
| Hine v. Trevor, 4 Wallace 555 | 4 |
| Hoffman v. Missouri, 274 U. S. 21 | 19 |
| Houston v. Moore, 5 Wheaton 1 | 5 |
| Hustead v. Mo. Pac. Ry. Co., 143 Mo. App. 623 | 7 |
| Loftus v. Penna. Railroad Co., 107 Ohio St. 142 | 13 |
| Lucas v. Alexander, 279 U. S. 573 | 16 |
| Lynott v. Great Lakes T. Co., 234 N. Y. 626, 202 N. Y. A. D. 210 | 20 |
| Michigan Central R. v. Mix, 278 U. S. 492 | 19 |
| Minneapolis & St. L. R. Co. v. Bombolis, 241 U. S. 211 | 10 |
| Mo. Pac. Ry. Co. v. Boone, 270 U. S. 466 | 16 |
| Murnan v. Wabash R. Co., 246 N. Y. 244 | 14 |
| Panama Railroad Co. v. Johnson, 264 U. S. 375 | 6, 8, 16 |
| Panama Railroad Co. v. Vasquez, 271 U. S. 577 | 6 |
| Pattrone v. Howlett, 237 N. Y. 626 | 20 |
| People ex rel. Barbour v. Gates, 43 N. Y. 40 | 10 |
| Philles v. Mo. Pac. Ry. Co., 141 Mo. App. 561 | 8 |
| Red Cross Line v. Atl. Fruit Line, 264 U. S. 109 | 17 |
| Richman-Anchor Co. v. U. S., 275 U. S. 142 | 16 |

Page

Rodigrues v. Transmarine Corp., 216 N. Y. A. D. 377 .. 20
Rushworth v. Judges of Common Pleas, 58 N. J. L. 97 9

St. L. B. & I. M. Ry. v. Taylor, 210 U. S. 208 ..... 18
Second Employers Liability Cases, 223 U. S. 1 ... 6, 10, 14
Shambe v. D. & H. R. Co., 298 Pa. 240 ..... 19
State ex rel. Sullivan v. Tazewell, 123 Ore. 326 .... 19, 20

Taylor v. Carryl, 20 Howard 583 ..... 4
Teal v. Felton, 12 Howard 284 ..... 5
Tenn. Coal & I. Co. v. George, 233 U. S. 354 ..... 7

Walton v. Pryor, 276 Ill. 563 ..... 12

TABLE OF STATUTES CITED.

Act of June 8, 1911, P. L. 1710 (Purdon's Penna. Stat. Ann., Title 15, Sects. 3141, 3142) ..... 18

Jones Act of 1920, Section 33 (U. S. C. A., Title 45, Section 688, 41 Statutes at Large, 1007) .... ..... 2, 6

Judiciary Act of 1789 (Judicial Code, Section 24, U. S. C. A. Title 28, section 41) ..... 4

TABLE OF TEXTBOOKS CITED.

The Federalist ..... 4

Kent's Commentaries ..... ..... 4, 5

IN THE

# Supreme Court of the United States

October Term, 1932. No. 90.

ANNA S. BAINBRIDGE, Petitioner,

*vs.*

MERCHANTS & MINERS TRANSPORTATION COMPANY.

## BRIEF FOR PETITIONER.

### I.

### STATEMENT OF MATTER INVOLVED.

The petitioner, Anna S. Bainbridge, on December 30, 1927, was employed by the respondent, the Merchants & Miners Transportation Company, on board the latter's vessel, the S. S. Chatham. While the "Chatham" was moored to the respondent's wharf in Philadelphia County, the petitioner, during the course of her employment, was caused to fall and receive injuries by reason of the negligence of her employer, the respondent. Your petitioner brought an action in the Court of Common Pleas, No. 4, of Philadelphia County, on December 17, 1929, pursuant to Section 33 of the Jones Act, to recover damages for her injuries.

The respondent presented a petition for a rule to show cause why your petitioner's action should not be dismissed for want of jurisdiction on the ground that its principal office was located in Baltimore, Maryland, and that, by virtue of the last sentence of Section 33 of the Jones Act, it could be sued in that city only (R. 5). The court of Common Pleas dismissed your petitioner's action by making absolute the rule (R. 8).

Your petitioner appealed to the Supreme Court of Pennsylvania, assigning as error the order of the Common Pleas Court (R. 11). On February 3rd, 1932, the Supreme Court affirmed the order of the Common Pleas Court (R. 13). Your petitioner presented a petition for re-argument, which was refused by the Supreme Court on March 14th, 1932 (R. 16). Your petitioner presented to this Court a petition for a writ of certiorari to the Supreme Court of Pennsylvania, and an order, granting the petition, was entered by this Court on October 10th, 1932.

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## II.

## THE QUESTION PRESENTED.

May the venue provision of Section 33 of the Jones Act of 1920 (U. S. Code, Title 45, Section 688, 41 Statutes at Large, 1007) which directs—

> "Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides, or in which his principal office is located."

be properly construed so as to apply to state courts, when actions pursuant to the section are brought therein, or is it confined in its application to federal courts?

## III.

## ARGUMENT.

### Summary of Argument.

Point A. The provision does not deal with jurisdiction in the sense of subject matter but with venue. The jurisdiction of state courts over the subject matter exists because of the authority conferred upon them by the constitutions and laws of their respective states, and because Congress has not given an exclusive jurisdiction to the federal courts.

Point B. A direction of venue does not limit the cause of action, but is a regulation of jurisdiction and procedure. It is not an enactment of substantive law but relates purely to the mechanics of procedure.

Point C. Congress cannot regulate venue in the State Courts.

Point D. Congress has not, by this provision, attempted to regulate venue in state courts.

Point E. The Pennsylvania venue provision applies and under that this action is properly brought.

**Point A. Jurisdiction of State Courts.**

Prior to the adoption of the Federal Constitution the States existed as absolute and independent sovereignties, and their courts had complete and unrestricted jurisdiction over all subjects. By the adoption of the Constitution, the States delegated to the federal government certain judicial powers. The grant was made in *Article 3, Section 2, Clause 1, U. S. Constitution.* So far as this case is concerned, it is but necessary to note that by that clause the judicial power of the federal government was extended to all causes of admiralty cognizance. This was construed to mean that the federal judiciary had sole jurisdiction of causes peculiarly maritime, viz. libels in rem, and matters of prize, but that the common law remedy of an action in personam, where competent to enforce the maritime right, was still available in state courts. *The Hine v. Trevor,* 4 Wallace 555, 571; *Taylor v. Carryl,* 20 Howard 583, 598.

This principle was embodied in the *savings to suitors clause* of *Section 9* of the *Judiciary Act of 1789* (now contained in *Section 24, Judicial Code, U. S. C. A. Title 28, Section 41.*)

The States retained in their courts all such jurisdiction as was not expressly granted to the federal government, and which would not be incompatible with a similar exercise of such power by the federal government.

> *The Federalist, Letter No. 82,*
> *Kent's Commentaries,* page 395, et seq.,
> *The Collector v. Day,* 11 Wallace 113, 124.

The doctrine arose and has always been recognized that Congress in pursuance of the legislative powers granted to it by the Constitution has an absolute election in determining what tribunals shall enforce its enactments. When it creates a cause of action, the enforcement of which is by the Federal Constitution given exclusively to the fed-

eral judiciary, it has no such election. If, however, the cause of action it does create is one which is subject to the jurisdiction of both federal and state courts, then Congress has an absolute right to determine whether the federal courts shall have an exclusive jurisdiction or the concurrent jurisdiction of both judicial systems shall be exercised. It may give an exclusive jurisdiction to the federal courts and thus deprive the state courts of their concurrent jurisdiction, arising from a pre-existing authority over causes of action of a similar nature. If Congress does not give such an exclusive jurisdiction to the federal courts, the state courts then exercise what jurisdiction is granted them in the manner provided by the constitution and laws of their respective States.

Thus, Congress in providing for concurrent jurisdiction does not grant any power to the state courts; it has only a negative power of control. It cannot affect or limit their jurisdictional powers but may leave causes of action to their jurisdiction when it chooses. This was clearly stated by Mr. Justice Washington in *Houston v. Moore,* 5 Wheaton 1, 27:

> "For I hold it to be perfectly clear, that Congress can not confer any jurisdiction upon any courts but such as exist under the constitution and laws of the United States, although the State Courts may exercise jurisdiction on questions authorized by the laws of the state and not prohibited by the exclusive jurisdiction of the federal courts."

And that doctrine has been repeatedly held by this Court. *Teal v. Felton,* 12 Howard 284, 292; *Claflin v. Houseman,* 93 U. S. 130, 135; *Grubb v. Public Utilities Comm.,* 281 U. S. 470, 476. It was expressly pointed out by *Chancellor Kent,* in his *Commentaries,* pp. 399, 341, when he declared that unless Congress expressly granted an exclusive jurisdiction to the federal courts the state courts would retain a concurrent jurisdiction; that Congress can-

not compel a state court to entertain jurisdiction, but only permits them to do so when they have an inherent jurisdiction adequate to the case; that they do not become courts subject to regulation by Congress.

The substantive laws enacted by Congress become, by operation of the *supremacy clause* of the *U. S. Constitution*, the laws of the several states, and a duty arises upon the part of the state courts to enforce such laws when they are competent by reason of their own jurisdiction and their state procedure is adequate to give the desired relief. *Claflin v. Houseman*, supra; *Second Employers Liability Cases*, 223 U. S. 1.

In *Panama Railroad Co. v. Johnson*, 264 U. S. 375, this Court construed the last sentence of the Jones Act, Section 33, as not to confer an exclusive jurisdiction of the subject matter upon the federal court designated, but only to regulate venue in those courts. In *Engel v. Davenport*, 271 U. S. 33, and in *Panama Railroad Co. v. Vasquez*, 271 U. S. 577, this Court held that the state courts had a concurrent jurisdiction, and that this provision did not purport to confer an exclusive jurisdiction on the federal courts.

It has now been determined that the state courts have jurisdiction by reason of their own authority and not by reason of any grant by Congress; that this provision of the Jones Act deals only with venue. It next becomes necessary to examine and determine the nature of venue.

**Point B. Definition of Venue.**

In *Tenn. Coal & Iron Co. v. George,* 233 U. S. 354, an action was brought in Georgia by an employee against his employer to recover damages for an injury received in Alabama. He relied for his recovery upon an Alabama statute which made the employer liable to the employee for injuries caused by defects in machinery, and further provided: "All actions under said section 3910 must be brought in a court of competent jurisdiction within the state of Alabama and not elsewhere." It was contended that the Georgia court could not take jurisdiction because this provision restricted the cause of action to the Alabama courts and was entitled to full faith and credit in the courts of other states. This Court held that the full faith and credit clause only dealt with matters of substantive law; that the place of bringing an action, even though the direction be embodied in the statute creating a new cause of action, is not a part of that cause of action; that venue does not impose a limitation upon the right created but upon the jurisdiction of a court; and that Alabama could not control the exercise of jurisdiction by Georgia courts. (page 358)

In *Hustead v. Mo. Pac. Rwy. Co.,* 143 Mo. App. 623, an action was brought in Missouri for a death which occurred in Kansas against a railroad corporation; it was contended by the defendant that the action was improper by reason of a provision in the Kansas statute creating the right, which directed that such actions against common carriers should be brought in certain designated counties. The court held that the direction did not destroy the transitory nature of the action but only regulated the procedure in Kansas courts; that prescribing where an action shall be brought has nothing to do with the creation of the right of action; that there was no more reason for saying that this provision applied to courts of other jurisdictions than that any venue provision, even though not in the statute creating the right, also so applied. (pp. 624, 625)

See also: *Philles v. Mo. Pac. Ry. Co.*, 141 Mo. App. 561.

This Court necessarily came to this conclusion in the *First Panama Railroad Case*, supra, when it held that the venue provision of the Jones Act could be waived by the defendant's consenting to the federal court's jurisdiction. That conclusion could not have been reached if the provision had been a limitation upon the cause of action.

It has thus far been established that the jurisdiction of state courts over actions under the Jones Act exists by reason of the powers granted them by the laws of the states; that this provision is a regulation of the jurisdiction or procedure of courts. It next becomes necessary to determine whether Congress can regulate the jurisdiction and procedure of state courts.

**Point C. Congress cannot regulate venue in State Courts.**

It is the petitioner's contention that there is no power in Congress to regulate jurisdiction or prescribe rules of procedure in state courts; that this rule prevails even though the subject matter of the state court's exercise of jurisdiction arises from an enactment by Congress. It has been clearly demonstrated in the first point of this argument that the latter fact does not enlarge the powers of Congress, since it does not confer such jurisdiction but merely recognizes it.

This principle is embodied in the *Tenth Amendment, U. S. Constitution,* for since such a power is not granted to the federal government it is necessarily reserved to the States. It is extremely difficult to point to any decision of this Court which squarely upholds this principle, for the obvious reason that since Congress has not this power it has never attempted to exercise it. The doctrine has, however, been recognized frequently in the decisions of this Court and the State Courts.

In *Calder v. Bull,* 3 Dallas 386, this Court recognized this doctrine, and Mr. Justice Chase stated (p. 387) that "the establishing courts of justice . . . and the making regulations for the administration of justice, within each state according to its laws', was the exclusive province of State Legislatures and had not been granted to the federal government.

In *Collector v. Day,* 11 Wallace 113, this principle was the basis for the denial to Congress of the power to tax the salaries of state judges, and it was pointed out that the maintenance of a judiciary is a sovereign power of the state governments in respect to which the states are as independent of the federal government as that government is of the states. (p. 126)

In *Rushworth v. Judges of Common Pleas,* 58 N. J. L. 97, it was contended that a New Jersey statute which provided that no person should be naturalized within thirty days preceding an election was unconstitutional in that the power to direct the process of naturalization had been vested exclusively in Congress. The court rejected this contention and said (p. 100):

> "Congress is without power to interfere with or control state courts, except insofar as the federal courts have appellate jurisdiction."

And, p. 101:

> "There has been no surrender by the states of the right to establish their own courts, to define or limit their jurisdiction and functions, and to regulate and control them in all respects, except as to appellate jurisdiction and as to subject matters within the exclusive jurisdictions of the United States.
>
> "The state establishes its own courts, defines their jurisdiction, appoints its judges and pays their salaries."

Thus, it has been held that Congress is without power to prescribe rules of evidence for state courts. *People ex rel. Barbour v. Gates,* 43 N. Y. 40; *Caldwell v. N. J. Steamboat Co.,* 47 N. Y. 282; *Carpenter v. Snelling,* 97 Mass. 452.

In *Chambers v. B. & O. R. R.,* 207 U. S. 142, it was held that "subject to the restrictions of the Federal Constitution, the state may determine the limits of the jurisdiction of its Courts, and the character of the controversies which shall be heard in them". (p. 148)

In the *Second Employers Liability Cases,* supra, this Court, after explaining the ground upon which the statute was enforcible in state courts as of right, recognized this want of authority upon the part of Congress, and said (p. 56):

> "Because of some general observations in the opinion of the Circuit Court of Errors, and to the end that the remaining ground of decision advanced therein may be more accurately understood, we deem it well to observe there there is not here involved any attempt by Congress to enlarge or regulate the jurisdiction of state courts or to control or affect their modes of procedure, but only a question of the duty of such a court, when its ordinary jurisdiction as prescribed by local laws is appropriate to the occasion and is invoked in conformity with those laws, to take cognizance of an action to enforce a right of civil recovery arising under the act of Congress and susceptible of adjudication according to the prevailing rules of procedure."

The decision of this Court which most clearly shows the error into which the Pennsylvania Supreme Court fell in construing the venue provision of the Jones Act to apply to state courts is *Minneapolis & St. L. R. Co. v. Bombolis,* 241 U. S. 211. In that case an action was brought in a Minnesota state court under the federal Employers' Liability Act. It was contended by the railroad company that the Minnesota court could not enforce the cause of ac-

tion because a verdict by five-sixths of the jury was permitted under state law; that, since the Seventh Amendment to the Constitution required an unanimous verdict, the amendment was a limitation upon the power of Congress to create causes of action enforcible in courts and that by reason thereof Congress should limit every right created by it by requiring the court enforcing the right to become bound by the restriction of the amendment. This Court, speaking through Mr. Chief Justice White, said, p. 221:

> "Moreover the proposition is in conflict with an essential principle upon which our dual constitutional system of government rests, that is, that lawful rights of the citizen, whether arising from a legislative exercise of state or national power, unless excepted by express constitutional limitation or valid legislation to that effect, are concurrently subject to be enforced in the courts of the state or nation when such rights come within the general scope of the jurisdiction conferred upon such courts by the authority, state or nation, creating them. This principle was made the basis of the first federal Judiciary Act and has prevailed in theory and practice ever since as to rights of every character, whether derived from constitutional grant or legislative enactment, state or national. In fact this theory and practice is but an expression of the principles underlying the constitution and which cause the governments and courts of both the nation and the several States not to be strange or foreign to each other in the broad sense of that word, but to be all courts of a common country, all within the orbit of their lawful authority being charged with the duty to safeguard and enforce the right of every citizen without reference to the particular exercise of the governmental power from which the right may have arisen, if only the authority to enforce such right comes generally within the scope of the jurisdiction conferred by the government creating them. And it is a forgetfulness of this truth which doubtless led to the suggestion made in the argument that the ruling in Mondou v. N. Y. N. H. & H. R. R. Co., 223 U. S.

1, had overthrown the ancient and settled landmarks and had caused state courts to become courts of the United States exercising a jurisdiction conferred by Congress, whenever the duty was cast upon them to enforce a federal right. It is true in the Mondou case it was held that where the general jurisdiction conferred by the state law upon a state court embraced otherwise causes of action created by an act of Congress, it would be a violation of duty under the Constitution for the court to refuse to enforce a right arising from the law of the United States because of conceptions of impolicy or want of wisdom on part of Congress in having called into play its lawful powers. But that ruling in no sense implied that the duty which was declared to exist on the part of the state court depended upon the conception that for the purpose of enforcing the right the state court was to be treated as a federal court deriving its authority not from the State creating it, but from the United States. On the contrary, the principle upon which the Mondou case rested, while not questioning the diverse governmental sources from which the states and national courts drew their authority, recognized the unity of governments, national and state, and the common fealty of all courts, both state and national, to both state and national constitutions, and the duty resting upon them, when it was within the scope of their authority to protect and enforce the rights lawfully created, without reference to the particular government from whose exercise of lawful power the right arose."

In *Walton v. Pryor*, 276 Ill. 563, 246 U. S. 675, an action was brought in Illinois under the federal Employers Liability Act for a death occurring in Missouri. An Illinois statute provided that no action could be brought in the state for a death occurring without the state. It was contended that the court was compelled to entertain this cause of action because it arose by reason of a federal enactment. The court held that the power of Congress did not extend that far; that its substantive enactments superseded state

law, but that there was a clear distinction between creating a cause of action and providing for its enforcement; that the right came into existence by the enactment of law but that the remedy is provided by the establishment of courts and bestowing upon them jurisdiction; that the court's jurisdiction could not be controlled by federal enactment (p. 569).

In *Chi. M. & St. P. R. Co. v. McGinley,* 175 Wisc. 565, it was contended that the venue provision of Section 6 of the 1910 Amendment to the federal Employers Liability Act applied to an action brought in the state court, and that the venue provision of Wisconsin providing that actions against foreign corporations could be brought where the plaintiff chose was inapplicable. The court held that its jurisdiction did not exist by reason of a grant from Congress but by the constitution and laws of the State; that Congress could permit state courts to act but could not control their exercise of jurisdiction (p. 570).

In *Loftus v. Penna. Railroad Co.,* 107 Ohio St. 352, a resident of Pennsylvania, who was injured in the course of his employment in Pennsylvania, brought an action in Ohio under the federal Employers Liability Act. A statute of Ohio provided that actions against transportation companies should be brought only in the county of plaintiff's residence or where the accident occurred. It was contended that since this action was brought under the federal act the Ohio statute could not be applied. The court held that the Ohio venue provision would apply even though to defeat a federal cause of action and that it was beyond the powers of Congress to require a state court to exercise jurisdiction when by the laws of the state it was prohibited from so doing (pp. 356, 359).

*Doll v. Chi. Gr. W. R. Co.,* 159 Minn. 323, was an action under the federal Employers Liability Act, and it was contended that it could be brought in a state court only if that court was of the county wherein suit could be brought in the federal district court. The court held otherwise

and said (p. 324) "Congress may create rights and provide for their enforcement in the state courts, and, in such cases, those courts may not decline jurisdiction. But Congress may not go farther and govern the state court on questions of venue, nor direct where or within what limited portion of the state its court may function with respect to cases within their jurisdiction. That is a question for local regulation and state authority."

In *Murnan v. Wabash R. Co.*, 246 N. Y. 244, an action was instituted in the New York court by a resident of Connecticut against an Indiana corporation to recover under the federal Employers Liability Act for an injury that occurred in Detroit. A statute in New York provides that where an action is brought by one non-resident against another founded upon a tort occurring in another state it is discretionary in the court to assume or not to assume jurisdiction. It was contended that by reason of the doctrine enunciated by this court in the *Second Employers Liability Cases, supra,* the New York court having jurisdiction of such a case was compelled to exercise it. The court pointed out that this Court had in that case said that there was no attempt by Congress to enlarge the jurisdiction of state courts, and said (p. 248):

> "The courts of New York exercise their discretion in all cases where the tort action is brought by one non-resident against another under the laws of another state. The practice may be anomalous but it is well established. That Congress has undertaken to regulate the exercise of jurisdiction by our courts by making compulsory what in other similar cases is discretionary seems an unreasonable conclusion and a resulting invasion of the powers of our tribunals as heretofore exercised. We conclude that a litigant who brings his action under the federal Employers Liability Act stands before the court in no different attitude than a litigant who brings his action under a statute of a sister state. He may not be cast out because he

is suing under the act of Congress. He may not enforce his rights merely because he is suing under the act."

In *Douglass v. N. Y. N. H. & H. R. Co.*, 279 U. S. 377, the same contention was made, and this Court sustained the principles stated by the New York Court of Appeals (p. 387).

It is submitted that the doctrine enunciated is clear and unmistakable. Congress may create a cause of action enforcible in state courts, but it may not provide for the manner of its enforcement in those courts. It may not determine the remedy to be afforded by those courts. It has no power to regulate the venue of actions in state courts, for such an attempt would be an interference with their jurisdictional and procedural powers which were never delegated to the federal government.

The principle of the *Murnan Case* clearly demonstrates that the provision of the Jones Act cannot be applied to state courts. If a foreign corporation should have its principal office in New York, and a seaman, resident of another state, should be injured in another state, he could not sue as of right in a New York court, even though that court should be "of the district in which the defendant employer resides or in which his principal office is located".

It has thus far been determined that this provision does not deal with jurisdiction in the sense of subject matter but with venue; that the state courts have jurisdiction if and only if they are given such authority by the constitution and laws of their respective states, and do not derive such authority from a grant by Congress; that venue deals with jurisdiction or power of courts, and controls the remedy granted by their authority; that Congress is without power to regulate venue in state courts, for an attempt to do so would be an interference with a right reserved to the States by the Tenth Amendment. It now becomes necessary to determine whether Congress has attempted to exercise such a power.

**Point D. Congress has not, by this provision, attempted to regulate venue in state courts.**

First: The language used compels this construction. The use of the term "district" and the use of the singular, "the court", in designating the tribunal leave no room for doubt. Congress in setting up rules of practice and procedure is speaking in reference to its own courts, and the language used bears out this intention. If Congress were, by some method, attempting to go so far as to regulate jurisdiction and procedure in state courts it would certainly make its meaning clear and explicitly mention the state courts as such, instead of permitting them to be included by inference. It would not leave this to be done by a straining of the language used, and it is submitted that this is necessary to make the terms used fit the state courts. It may be said that the language can be fitted to the state courts, but it is not a natural and ordinary use of the terms. If Congress had said "courts in whose territorial jurisdiction the employer resides", or had used some phrase as would naturally embrace state courts, it might be conceded that it has attempted to do so. But with the mere reference to a singular tribunal and the use of the term "district", which although not exclusively confined to federal courts, is apparently of a federal connotation, it is submitted that the language cannot support a construction such as given by the Pennsylvania courts.

Second: It is a well established principle that when a statute is susceptible of two constructions, one of which would cause it to be declared unconstitutional, and the other of which would sustain its validity, the latter must be adopted. *Panama R. Co. v. Johnson,* 264 U. S. 375, 390; *Mo. Pac. Ry. Co. v. Boone,* 270 U. S. 466, 471, 472; *Richman-Anchor Co. v. U. S.,* 275 U. S. 142, 148; *Lucas v. Alexander,* 279 U. S. 573, 577; *Crowell v. Benson,* 52 S. Ct. 285, 296.

Under this rule of construction, the venue provision of the Jones Act must be construed so that it is limited in its effect to the federal courts. A construction which would apply that provision to state courts would make the statute unconstitutional and so, must be discarded.

It has thus far been determined that this provision of the Jones Act does not apply to state courts. It next becomes necessary to determine whether the remedial provision of Pennsylvania law, regulating venue, should be applied and whether or not it fits the manner in which this action was brought.

**Point E. The Pennsylvania venue provision applies and under that this action is properly brought.**

Since venue deals only with remedy, with the right of a court to compel a party to appear before it, or to hear a particular cause of action, and not with the right of the plaintiff to institute his action, the Pennsylvania rule applies.

In *Red Cross Line v. Atl. Fruit Line,* 264 U. S. 109, a bill in equity was filed in a New York Court to require specific performance of an agreement to arbitrate a maritime contract, in compliance with a New York Statute. The rule in the federal courts was that executory agreements to arbitrate admiralty disputes would not be enforced, although the rule gave effect to an executed agreement to arbitrate. It was contended that the New York statute was unconstitutional because violative of the exclusive federal power over admiralty matters. This Court rejected that contention, and declared that the right of a common law remedy saved to suitors, although not including attempted changes by the States in substantive admiralty law, does include all means other than admiralty proceedings which may be used to enforce the right or redress the injury; that a State can not give a remedy in rem, but otherwise is free to

adopt such remedies as it sees fit; that New York had the power to confer upon its courts the authority to compel parties within its jurisdiction to specifically perform an agreement for arbitration valid by maritime law (p. 123).

In *St. L. B. & I. M. Ry. v. Taylor*, 210 U. S. 208, an action was instituted in the St. Louis court against a Texas corporation which did no business in Missouri, by means of foreign attachment. The defendant contended that since the action was founded upon a federal law, the Carmack Amendment, the right could be enforced only under the same conditions applicable in federal courts; and that since the action could not be brought in a federal court in Missouri, the State court could not act. This Court held this contention groundless, and pointed out that Missouri conferred jurisdiction over the subject matter upon its courts, and provided that such jurisdiction could be exercised to the extent of apply property attached to the satisfaction of the claim, even without personal service; that the fact that such a remedy was not available in the federal court for Missouri was without legal significance; that "the origin of the right does not affect the manner of administering the remedy. The grant of concurrent jurisdiction implies that, in the first instance, the plaintiff shall have the choice of the court. As an incident, he is entitled to whatever remedial advantage inheres in the particular forum" (p. 208).

The summons in this case was issued under the Pennsylvania *Act of June 8, 1911, P. L. 1710* (Purdon's Penna. Stats. Ann., Title 15, Sects. 3141, 3142), which requires foreign corporations, as a precedent to doing business in Pennsylvania, to register and appoint the Secretary of the Commonwealth their agent for the service of process. It provides, Section 2:

> " . . . Such process may be issued by any Court or Magistrate or Justice of the Peace having jurisdic-

tion of the subject-matter in controversy, in any county of the Commonwealth in which said corporation shall have its principal place of business or in such county in which the right of action arose."

This statute has been construed as mandatory upon the Pennsylvania courts, leaving in them no discretion but an imperative duty. In *Shambe v. D. & H. R. Co.*, 298 Pa. 240, 246, the court declared that the place for institution of an action against a foreign corporation which has registered, is for the Legislature to determine and not for the court.

In this case, the respondent, the Merchants & Miners Transportation Company, registered under the statute and designated Philadelphia County as the location of its principal place of business in Pennsylvania. Furthermore, this cause of action arose in Philadelphia county.

A rule, leaving the venue of actions under the Jones Act in state courts to determination by state law cannot work injustice, for, wherever the rule of venue as prescribed by state law is of such a nature as to constitute a burden upon the interstate commerce of the employer, such jurisdiction is ousted. This has been held by this Court in actions in state courts under the federal Employers' Liability Act. See *Michigan Central R. v. Mix*, 278 U. S. 492; *Hoffman v. Missouri*, 274 U. S. 21.

The rule, for which the respondent contends, does work a manifest injustice. This is aptly illustrated in *State ex rel. Sullivan v. Tazewell*, 123 Ore. 326. There an employee of a steamship company, who worked exclusively as a pilot on Oregon rivers, was injured. His employer was a Delaware corporation with its principal office in New York City.

## IV.

## CONCLUSION.

It is submitted that it has been clearly established that Congressional enactment is not the source of the state court's jurisdiction over causes of action under the Jones Act, but that such jurisdiction depends upon the constitution and laws of the state itself; that this provision is a regulation of venue, and consequently of jurisdiction and procedure; that Congress cannot constitutionally regulate jurisdiction and procedure in state courts; that Congress has not attempted to do so; that, since venue deals only with remedy, the remedial statute of Pennsylvania determines the venue of this action, and under such statute this action is properly brought.

It is submitted that it is a necessary conclusion that the last sentence of Section 33 of the Jones Act must be construed to apply to federal courts alone. It has been so construed in *Lynott v. Great Lakes T. Co.*, 234 N. Y. 626, 202 N. Y. A. D. 210; *Pattrone v. Howlett*, 237 N. Y. 626; *Rodigrues v. Transmarine Corp.*, 216 N. Y. A. D. 337; *Bennet v. Connelly*, 122 N. Y. Misc. 149; *State ex rel. Sullivan v. Tazewell*, supra.

Counsel for petitioner respectfully request this Court to place that construction upon the statute and, to that end, to reverse the order and judgment of the Supreme Court of Pennsylvania.

Respectfully submitted,

EDWIN J. MCDERMOTT,
THOMAS D. MCBRIDE,
WILLIAM CHARLES BROWN,
*Counsel for Petitioner.*